REMARKS:

Applicant has carefully studied the Final Examiner's Action and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Claim Rejections – 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C § 103(a).

Claims 1, 3-8, 10-11, 14-16 and 19-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over by U.S. Patent No. 5,968,006 to Hofmann in view of U.S. Patent No. 5,246,418 to Haynes et al.

With respect to claim 1, from the previous Office Action cited by the Examiner, the Office states that Hofmann discloses a method an apparatus for electromanipulation of chemical species in vivo to a target tissue (abstract) comprising: a substantially planar nonconductive sheet (20, 22) conformable to the three dimensional topography of the surface of the target tissue (column 4, lines 65-67); a plurality of electrode elements secured in spaced apart relation on the array base (figure 1A), the electrode elements adapted to be coupled to a voltage controlled and current controlled electrical source (column 4, lines 24-56). The Office states that Haynes teaches a drug delivery system which selectively provides a controlled voltage and controlled current to the electrodes (column 2, lines 45-50). The Office concludes that it would have been obvious to one having ordinary skill in the art to modify the method and apparatus of Hofmann with the electric circuitry of Haynes to allow for greater control in controlling the amount of rate of current or voltage applied to the electrodes of the drug delivery device (column 2, lines 55-61).

Claim 1 has been amended to more clearly describe that which the Applicant regards as the invention.

Amended claim 1 recites, a device for electromanipulation of chemical species in vivo relative to a target tissue comprising: a voltage controlled and current controlled electrical source; a substantially planar nonconductive sheet conformable to the three-dimensional topography of the surface of the target tissue; and at least three independently addressable electrode elements secured in spaced apart relation on the sheet, the electrode elements coupled to receive a voltage controlled and current controlled output from the electrical source, the voltage controlled and current controlled output from the electrical source being such that when the electrode elements are positioned on the surface of the target tissue and a controlled voltage is applied between the electrode elements, a current drawn by the electrode elements is controlled by the electrical source to insure that a peak power of less than about 1 kilowatt is delivered to the target tissue.

As such, in accordance with claim 1, the device includes at least three independently addressable electrodes and when the electrodes are placed in contact with the target tissue, the electrical source controls the current that is drawn by the electrodes such that the power delivered to the target tissue is less than 1kW. This is in contrast to Hofmann which describes at col. 4, lines 57-62, an "electrode assembly **14** is mounted on a support member **22** and is similarly constructed of a pair of parallel conductors **32** and **34** with a plurality of electrodes **36** extending outward from the conductor **34** and a similar plurality of electrodes **38** extending outward from the conductor **34** toward conductor **32**." As such, while Hofmann describes a plurality of electrodes, they are not independently addressable. The plurality of electrodes **36** extending from the conductor **34** are electrically coupled to the conductor **34** and are therefore not addressable independently, but instead are addressable as a group controlled by the voltage applied to the conductor **34**. A similar situation exists for conductor **32**. As such, Hofmann describes an apparatus having only two independently addressable conductors (electrodes) 32 and 34.

Accordingly, Applicant contends that the Office has not established a *prima facie* case of obviousness because neither Hofmann nor Haynes, alone or in combination, teach "at least three independently addressable electrode elements secured in spaced apart relation on the sheet", as described and claimed by the present invention.

For the reasons presented above, Applicant believes that amended independent claim 1 is patentable over Hofmann in view of Haynes and is believed to be in condition for allowance.

Claims 3-8, 10-11 and 14-16 and 19-22 are dependent upon claim 1, which has been shown to be allowable, and are therefore allowable as a matter of law.

Independent claim 23 has been amended to more clearly describe that which the Applicant regards as the invention.

For the reasons presented above regarding the patentability of independent claim 1, Applicant contends that amended independent claim 23 is patentable over Hofmann in view of Haynes and is believed to be in condition for allowance.

Independent claim 24 has been amended to more clearly describe that which the Applicant regards as the invention.

For the reasons present above regarding the patentability of independent claim 1, Applicant contends that amended independent claim 24 is patentable over Hofmann in view of Haynes and is believed to be in condition for allowance

Claims 25-28 are dependent upon claim 24, which has been shown to be allowable, and are therefore allowable as a matter of law.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hofmann (U.S. 5, 318,514) in view of Eppstein et al. (U.S. 2004/0039343).

Claims 17 and 18 are dependent upon claim 1, which has been shown to be allowable over Hofmann in view of Haynes. As such, Hofmann in combination with Haynes and Eppstein et al. does not teach all the elements of claims 17 and 18. Accordingly, claims 17 and 18 are believed to be in condition for allowance.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 925-8505 is requested.

Very respectfully,

SMITH & HOPEN

/molly sauter/

By:_____

Molly L. Sauter
180 Pine Avenue North
Oldsmar, Florida 34677
Agent for Applicant
Reg. No. 46,457

Dated: March 1, 2010

Customer No. 21,901

CERTIFICATE OF ELECTRONIC TRANSMISSION

(37 C.F.R. 2.190 (b))

I HEREBY CERTIFY that this Preliminary Amendment is being electronically transmitted to the Patent and Trademark Office through EFS Web on March 1, 2010.

/jessica thompson/

Date: March 1, 2010

Jessica Thompson